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January 5, 2021

Via ECF

The Honorable Judge Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square
Courtroom 618
New York, New York 10007

MEMO ENDORSED

Re: **Feliciano Diaz Leon et. al. v. Toasties One Corp et. al.**
20-CV-6100 (KPF)

Dear Judge Failla:

We represent the Plaintiffs in the above-referenced matter, and we respectfully submit this letter to request from Your Honor a sixty (60) day extension on the time for Plaintiffs to file a Request for Certificate of Default against Defendants Toasties One Corp., and David Jung, as an individual (hereinafter, the “Defendants”).

Our office recently learned that one of the named Plaintiffs to this collective action, Victorio Guzman (hereinafter, “Plaintiff Guzman”), has passed away in an automobile accident. Our office learned of Plaintiff Guzman’s tragic passing after speaking to the brother of Plaintiff Guzman, who informed our office of the tragedy.

Procedural Posture

This action was commenced by the filing of the Collective Action Complaint on August 5, 2020. (Dkt. No. 1.) Personal service of process of copies of the Summons and Collective Action Complaint was successfully effectuated upon the Defendants on August 19, 2020, at 214 7th Avenue, New York, New York 10011. Defendants were required to interpose an Answer by September 9, 2020. (*See* Dkt. Nos. 7,8.)

On November 13, 2020, the Court issued an Order to Show Cause relating to service upon the Defendants of the Summons and Complaint. (Dkt. No. 6.) On December 4, 2020, our office responded to the Order by letter to the Court (“Response Letter”) (Dkt. No. 9.) Affidavits of Service were annexed to the Response Letter as “Exhibit A.” (Dkt. No. 9-1.) Plaintiffs’ Response Letter elucidated upon the numerous unsuccessful attempts Plaintiffs’ counsel has made since the

onset of this Action to contact the Defendants regarding this lawsuit. On December 4, 2020, for example, our office successfully contacted the business and asked to speak to the owner regarding this lawsuit, and his obligations hereto. We believe that the person to whom we spoke was the individual Defendant, David Jung. However, once we asked if – and then when – he would be available to discuss this pending lawsuit, he hastily disconnected the call. Moreover, no attorney has contacted our office regarding this matter or their representation of any of the Defendants.

Defendants are well aware of this lawsuit, but do not have any intention of appearing or responding to the Complaint. Therefore, Plaintiffs' December 4, 2020 Response Letter requested thirty (30) days to request a Certificate of Default and move to enter a default judgment against Defendants, so that Plaintiffs could file their motion to enter a default judgment on or before January 5, 2021, which was So Ordered by Your Honor. (Dkt. No. 10.)

Now, upon learning of Plaintiff Guzman's tragic passing, we respectfully request a sixty (60) day extension for Plaintiffs to file their motion to enter a default judgment on or before March 5, 2021. Plaintiffs plan to promptly file a Suggestion of Death of Plaintiff Guzman pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure and await to see if Mr. Guzman's family move to substitute and pursue his claims. We are advising Plaintiff Guzman's brother as to the steps that his family must now take for the substitution to occur.

We thank Your Honor for her consideration in this matter and we remain available to provide any additional information.

Respectfully submitted,

_____/s/_____
Roman Avshalumov, Esq.

CC: Failla_NYSDChambers@nysd.uscourts.gov (Via Email)
All Defendants: (Via U.S. Mail)

Application GRANTED. Plaintiffs may file their motion for default judgment on or before **March 5, 2021**. The Court sends its condolences to Mr. Guzman's family and friends.

Dated: January 5, 2021
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE